

FILE 1-1-1
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~851~~ 37

THE CUNO ENGINEERING CORPORATION,
Petitioner,

vs.

THE AUTOMATIC DEVICES CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.

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**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.**

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioner, The Cuno Engineering Corporation, defendant, respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit to review a judgment of that court entered March 10, 1941 (R. 598).

Summary and Short Statement of the Matter Involved.

This is a suit brought by the respondent, a patent holding company, against petitioner, a manufacturer, in the United States District Court for the District of Connecticut for alleged infringement of claims 1, 2, 3 and 11 of the Mead

patent 1,736,544 dated November 19, 1929, claims 3 and 20 of the Cohen patent 2,140,311 dated December 13, 1938, and claims 1, 2, 10, 16 and 18 of the Cohen patent 2,117,232 dated May 10, 1938. Each patent relates to an electric cigar lighter having a thermally actuated switch for opening the circuit.

The only matters involved in this petition are the questions of validity and infringement of claims 2, 3 and 11 of the Mead patent which were held invalid and not infringed by the Sinko lighter in the case of *The Automatic Devices Corporation v. Sinko Tool & Manufacturing Company* by the Circuit Court of Appeals for the Seventh Circuit, 112 F. (2d) 335 (340), (Petition for Writ of Certiorari denied on October 14, 1940, 311 U. S. [Ad. Sh.] XXI, No. 277 October Term, 1940). In the instant case these claims were held valid and infringed by the Circuit Court of Appeals for the Second Circuit (not yet reported) which reversed the decree of the United States District Court for the District of Connecticut, 34 Fed. Supp. p. 146. There was a denial of a motion for preliminary injunction (34 Fed. Supp. p. 144).

The District Court found all of the Cohen claims invalid and the Mead claims of doubtful validity and not infringed.

Respondent on appeal dropped the Cohen patent 2,140,311 and claim 1 of the Mead patent. The Circuit Court of Appeals for the Second Circuit affirmed the District Court as to the Cohen patent 2,117,232 and reversed it as to Mead 1,736,544.

Our petition for corrections of factual errors and for a rehearing as to Mead was denied February 27, 1941 (R. 597).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of Feb-

ruary 13, 1925. This is a suit arising under the patent laws, Judicial Code Sec. 24(7) (R. S. Sec. 629, par. 9; Mar. 3, 1911, c. 231, Sec. 24, par. 7, 36 Stat. 1092).

The date of the judgment which petitioner seeks to have reviewed is March 10, 1941 (R. 598).

Questions Presented.

1. Whether claims 2, 3 and 11 of the Mead patent 1,736,544 are valid as decided by the Court of Appeals for the Second Circuit or whether these same claims are invalid as decided by the Circuit Court of Appeals for the Seventh Circuit?

2. Shall a paper patent be construed to block progress in the art to which the patent relates, and shall the much later commercial success of a very different, well advertised device be used to support the patentability of a device an improved form of which was tried on the market and failed seven years before? The decision of the Circuit Court of Appeals for the Second Circuit seems in conflict with the decision of this Court in *Deering v. Wixona Harvester Works*, 155 U. S. 286 (295) and its effect stifles rather than promotes the useful arts.

3. Whether the requirements of the statute (R. S. 4888) that an invention must be particularly pointed out and distinctly claimed in a patent have been complied with in the claims of Mead in suit when elements not in said claims, but required for successful operation, are expressed in other claims and have been implied into these claims in suit in order to find them valid?

4. Whether the decision of the Circuit Court of Appeals for the Second Circuit does not conflict with the ruling of this Court in *The Permutit Co. v. Graver Corp.*, 284 U. S. 52 (58, 60) by reason of the Mead patent having been arbitrarily construed by the Circuit Court of Appeals for the

Second Circuit as for a basic improvement in cordless or wireless lighters when there is nothing in the specification or the claims in suit to require such construction? Such limitation was imported into the claims from the drawing; the claims were not intended to be limited to the embodiment illustrated, and the specification and claims were in language broad enough to cover other than wireless type lighters.

5. Whether a paper patent on an unsuccessful device should be construed to cover a later successful device and thus stifle rather than promote progress in the useful arts? Does petitioner's (defendant's) device infringe the Mead patent claims 2, 3 and 11, or, since respondent has admitted that the accused constructions before the Second and Seventh Circuit Courts of Appeal are "substantially similar", does it not avoid infringement for the reasons given by the Circuit Court of Appeals for the Seventh Circuit?

Reasons Relied On for the Allowance of the Writ.

Petitioner prays the writ to be allowed because:

1. The decision of the Circuit Court of Appeals for the Second Circuit holding claims 2, 3 and 11 of the Mead patent 1,736,544 to be valid, is in direct conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit, holding the same claims to be invalid in the case of *The Automatic Devices Corporation v. Sinko Tool & Manufacturing Company*, 112 F. (2d) 335. If this conflict continues petitioner will be stopped in its automatic cigar lighter business whereas its competitor Sinko Tool & Manufacturing Company has been judicially freed.

2. The record shows that Mead made some sort of a device experimentally but no device as shown and described in the Mead patent was ever sold. An improved form was sold for a short time in 1928 and possibly 1929 but dis-

continued as it was not a success (R. 249, R. 127, R. 251). In 1936 after a hundred experiments were made as testified to by the President of Plaintiff's licensee a very different device was put out by the Casco Products Corporation and advertised extensively. A so-called automatic lighter merely involves the addition of an old thermostatic latch to an old wireless plug type lighter. Such latches for other electric heater switches were old and a thermostatic latch for a cigar lighter switch was known before Mead and thermostatic switches of the exact type used by the defendant-petitioner were old prior to Mead.

3. It is not fair or conducive to certainty in the public's search for the limits of an invention in a patent claim to know that almost any feature from the description or drawing may be implied into a claim regardless of the fact that the inventor has manifested an intent not to do so by expressing such limitation in another claim. The Circuit Court of Appeals for the Second Circuit in effect read into the Mead claims limitations to the latch and spring not required by said claims but necessary for the purpose found by the Circuit Court of Appeals and expressed in other claims although the practice has been condemned. *Electric Machinery Mfg. Co. v. General Electric Co.*, 88 F. (2d) 11 (16), C. C. A. 2; *Kennedy v. Trimble*, 99 F. (2d) 786 (788) C. C. A. 2; *Motoshaver, Inc. v. Schick Dry Shaver*, 112 F. (2d) 701 (706) C. C. A. 9. We do not believe such a practice to be a compliance with the patent law (R. S. 4888). So far as is known, this Court has never directly ruled on this specific point.

4. The Circuit Court of Appeals for the Second Circuit has construed the Mead patent as for the final form of a successful wireless type lighter, when there is nothing in the specification or in the claims in suit about wireless lighters. No advantages of a wireless type lighter are re-

ferred to in the Mead patent. The drawing or illustration is the only foundation for such a construction. This Court has ruled in *Permutit Co. v. Graver Co.*, 284 U. S. 52 (58, 60) that such a construction does not comply with the statutory requirements for distinctly claiming the invention in a manner to notify the public of the extent of the invention. To the same effect is *Howe Machine Co. v. National Needle Co.*, 134 U. S. 388 (397). The Mead patent expressly states that it is not to be limited to the form illustrated (lines 27 to 33, page 4 of the Mead patent, R. 360) and the claims are vague enough to cover other types of lighters than the wireless kind.

5. Plaintiff-respondent formerly petitioned for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit in the case of *The Automatic Devices Corporation v. Sinko Tool & Manufacturing Company* and in an affidavit in support of its motion to withhold notice of denial of petition for certiorari counsel alleged that the accused devices in the Seventh Circuit Sinko case and in this Second Circuit Cuno case were "substantially similar". The Circuit Court of Appeals for the Seventh Circuit found the Mead patent should not be construed to cover all types of automatic wireless lighters, although the Circuit Court of Appeals for the Second Circuit has in effect construed the Mead patent that broadly. One reason for non-infringement of these same claims found by the Circuit Court of Appeals for the Seventh Circuit (112 F. (2d) 335 (340)) was:

"We think the claims do not read upon the accused device in that defendant's heating member after insertion is not movable on a support to a position where the heating unit is energized."

The Sinko and Cuno lighters are identical in this respect, but such does not seem to have been considered by the Circuit Court of Appeals for the Second Circuit. To require

defendant-petitioner who has benefited the art with a successful device to pay tribute to the owner of a different and unsuccessful paper patent is what the Circuit Court of Appeals for the Second Circuit has done and what this Court has said tends to obstruct the development of the useful arts, *Deering v. Winona Harvester Works*, 155 U. S. 286 (295); *Lovell v. Seybold Mach. Co.*, 169 Fed. 288 (290) C. C. A. 2.

Prayer.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Second Circuit to the end that this cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals for the Second Circuit be reversed; and that petitioner be granted such other and further relief as may be proper.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940

No. 851

THE CUNO ENGINEERING CORPORATION,
vs. *Petitioner,*

THE AUTOMATIC DEVICES CORPORATION

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

Opinions of the Courts Below.

The opinion of the United States District Court for the District of Connecticut was filed June 7, 1940 (R. 567) and is reported 34 Fed. Supp. 146.

The opinion of the Circuit Court of Appeals for the Second Circuit was decided February 3, 1941 (R. 584) and has not yet been reported so far as is known. Judgment was entered March 10, 1941. (R. 598).

The opinion of the Circuit Court of Appeals for the Seventh Circuit holding the Mead patent invalid and not infringed in the case of Automatic Devices Corp v. Sinko Tool and Mfg. Co. is reported 112 F. (2d) 335. The opinion of

the United States District Court for the Northern District of Illinois in the Sinko case has not been reported so far as is known. (Petition for Writ of Certiorari denied on October 14, 1940, 311 U. S. [Ad. Sh.] XXI, No. 277 October Term, 1940).

Jurisdiction.

Stated in the petition (page 2).

Statement of the Case.

The foregoing petition contains a statement of the material facts, as well as a statement of the questions involved.

Specification of Errors.

1. The Circuit Court of Appeals for the Second Circuit erred in finding and holding the Mead patent 1,736,544 was valid as to the claims in suit, numbers 2, 3 and 11.

2. The Circuit Court of Appeals for the Second Circuit erred in arbitrarily construing the patent on the unsuccessful Mead device to cover the successful construction of defendant-petitioner brought out about ten (10) years later.

3. The Circuit Court of Appeals for the Second Circuit erred in finding the Mead claims in suit to include a different cigar lighter that holds its position after being manually moved to close the circuit (Opinion, R. 584 at 586); and also in holding these claims to be directed to a lighter that should give notice that the plug was ready for use (Opinion, R. 584 at 586).

4. The Circuit Court of Appeals for the Second Circuit erred in construing the Mead patent as for cordless or wireless lighters when there is nothing in the specification or the claims in suit to require such limitation imported only from the drawing.

5. The Circuit Court of Appeals for the Second Circuit erred in finding and holding the very different accused device of defendant-petitioner to infringe the Mead claims in disregard of expressed differences in such claims.

6. The Circuit Court of Appeals for the Second Circuit erred in basing its opinion upon the number of facts contrary to the finding of the trial court and contrary to the evidence as pointed out in the "Petition for Corrections", "Factual Corrections", (R. 589).

7. The Circuit Court of Appeals for the Second Circuit erred in not holding and finding the Mead claims in suit to be invalid for their failure to comply with section 4888 R. S.

Summary of Argument.

The opinion of the Circuit Court of Appeals for the Seventh Circuit should be followed on the questions of validity and infringement of the Mead patent. The opinion of the Circuit Court of Appeals for the Second Circuit as to the Mead patent is contrary to the opinion of this Court in *Deering v. Winona Harvester Works*, 155 U. S. 286 (295) and in *Permutit Co. v. Graver Co.*, 284 U. S. 52 (58, 60) was based upon other errors including numerous factual errors (R. 589, Petition for Corrections and for Rehearing).

ARGUMENT.

1. The Circuit Court of Appeals for the Second Circuit erred in finding Claims 2, 3 and 11 of the Mead Patent valid.

The Circuit Court of Appeals for the Seventh Circuit in its opinion in *Automatic Devices Corp. v. Sinko Tool & Manufacturing Company*, 112 F. (2d) 335, found that wireless type lighters were old in *Zecchini* 1,437,701 (R. 454), that *Copeland* 1,844,206 who filed before Mead (R. 489) showed an electric cigar lighter having a thermostatic switch

for opening the circuit, that what Mead did was to apply an old thermostatic switch to another known type of heater, and that such was nothing more than mechanical skill.

The Circuit Court of Appeals for the Second Circuit seems to have regarded Copeland as "still born" ~~by~~ which we assume that it was not worthy because it did not affect the practical art. Mead as shown and described was also "still born". It was unsuccessful as is referred to more in detail later, and even if the criticism of Copeland be true, such should not preclude its use and pertinency to show anticipation. The Circuit Court of Appeals for the Second Circuit failed to appreciate that no change was necessary in order for the Mead claims in suit to read literally on Fig. 2 of Copeland 1,844,206. Thermostatic cut out switches were old on a wide variety of electric heaters such as sad irons, (Denhard 1,143,572 R. 427), coffee-cookers, (Newsom 1,318,168 R. 438), toasters, (Hurxthal 1,540,628 R. 461), and the reason why this old expedient was not common long before for still another sort of electric heater, the wireless cigar lighter, ~~was~~ because the wireless lighter was only just becoming commercially common and there was no demand for it. Plaintiff-respondent's licensee began its manufacture of wireless lighters about 1927 or 1928 (R. 94) and attracted competition in 1928 or 1929 (R. 96). The Circuit Court of Appeals for the Second Circuit was in error (Opinion, R. 584 at 587) in believing the non-automatic or manual type wireless lighter had become standard equipment before or because of the Mead invention. Thermostatic wireless cigar lighters did not appear in quantity or as standard equipment until plaintiff-respondent's licensee brought out its lighter of a construction very different (R. 404) from Mead, in 1936. The use of a thermostatic cut out switch on another type of electric heater from those on which it had been used before should not amount to invention, *Powers-Kennedy Construction Corp. v. Concrete*

Mixing & Conveying Co., 282 U. S. 175 (180). Conception of an idea has never been regarded as a contribution to the art unless expressed in a useful form which is not the case in the Mead patent.

2. A patent for an unsuccessful device should not be construed to cover a later, different, and successful construction.

If a paper patent on an unsuccessful device is to be construed broadly to cover a very different and later successful construction, produced only after a considerable development effort, then such practice will impede rather than promote the industrial arts as intended by the constitution, *Deering v. Winona Harvester Works*, 155 U. S. 286 (295); *Lowell v. Seybold Mach. Co.*, 169 Fed. 288 (290) C. C. A. 2. That is the situation here. The Mead device as shown in the patent drawing was never sold. (R. 249, 250), the District Court asked of plaintiff-respondent's witness:

"Q. Now do you explain the fact that you say this model was first made and the invention developed in 1926, and yet nothing appears to have been done about patenting the invention until after that company had sold out to Jessop a year later?

A. Well, I don't know; I couldn't explain that. We had no money to get a patent. It costs quite a bit of money and we were putting our time—I wasn't getting paid for my time outright. I would have *if it had been a success*. * * * (italics ours).

A form improved over that shown in the Mead patent drawing and having a spiral bimetal throwing spring outside and around the socket where it was cooler, was also unsuccessful, (R. 127):

"And he told me that he was very much disappointed and disgusted by the fact that practically all of them

came back after having been used a few times." (Cuno's testimony of Mead's statement to him).

(R. 251):

"Q. Mr. Head, you said that you had had considerable trouble with the thermostatic metal and later got a type that suited you better? A. Yes."

.

"I think the thermostatic metal we did try did not work satisfactory to us and we did not continue."

Plaintiff-respondent's witness who was president of its licensee manufacturer, testified they had to try out over a hundred improvements before getting a successful lighter (R. 96, 97):

"Q. After you had seen this Mead lighter, what did you do then in regard to lighters? A. At that particular time, why, I did not think a great deal of the lighter as it was. * * *"

.

"And I could easily produce in this Court a hundred more various types that we made before we actually made a successful lighter."

This shows the error of the Circuit Court of Appeals for the Second Circuit in saying (Opinion, R. 584 at 587) that the Mead invention brought the automatic wireless lighter "to what appears to be its final form".

The lighter of plaintiff-respondent's licensee embodies the details of defendant-petitioner's Wolfson patent 1,980,157 (R. 497) with the addition of a latch to hold the plug in closed circuit position. The lighter of defendant-petitioner, however, keeps the ignited stationary and only moves a sliding switch member to engage a latch.

3. It was error to read into the Mead claims, features from the description that are found in other claims.

A patent has been said to be a contract with the Government. *White v. Converse*, 20 F. (2d) 311 (313) C. C. A. 2. It should violate principles of contract construction to imply features into some parts of a document when the maker manifests an intent that such features should be omitted, by expressing them elsewhere, yet that is what the Circuit Court of Appeals for the Second Circuit has done. The feature of a latch does not occur in any of the Mead claims in suit. The purpose of the latch in the Mead construction is to hold the circuit closed automatically without manually having to hold the switch closed as had been necessary with the non-automatic wireless lighters. The opinion of the Circuit Court of Appeals for the Second Circuit found the advantage of the latch to be present in the Mead claims in suit when they said—

“So far as appears, nobody in this country before Mead made ‘wireless’ lighters automatic; that is to say, so that they should hold their position, after they had been manually made to close the circuit.” (Opinion, R. 584 at 585).

Implying the function or advantage of the latch into the Mead claims in suit is in effect implying the structural element responsible for that function or advantage into the claims. Mead expressly wished the latch included in claims 6, 8, 9, 10, 13 and 15, and did not desire the latch or its advantage included in the claims in suit. To imply a feature into a claim when that feature is expressed in other claims has been condemned. *Motoshaver Inc. v. Schick Dry Shaver*, 112 F. (2d) 701 (706) C. C. A. 9; *Kennedy v. Trimble*, 99 F. (2d) 786 (788) C. C. A. 2; *Electric Machinery Mfg. Co. v. General Electric Co.*, 88 F. (2d) 11 (16) C. C. A. 2. So far as is known this Court has not ruled on this specific point.

In the same way the spring or its equivalent was implied into claims 2 and 3 because the Circuit Court of Appeals for the Second Circuit found the function and advantage of the spring present in these claims when they found structure of the Mead claims in suit adapted to

“give notice that the plug was ready for use”

(Opinion, R. 584 at 585). A spring would be necessary to give this notice either visually or audibly in Mead by moving the plug away from its closed circuit position and against an abutment or stop. The spring or its equivalent is expressed in Mead claims 6 and 10 to 15. It should not have been imported into those claims where it is not expressed. The “signal” idea is not mentioned in Mead and in practice is inconsequential.

4. It was error to have limited the Mead claims in suit by the drawing.

The Circuit Court of Appeals for the Second Circuit found the Mead claims in issue to be directed to an automatic wireless type cigar lighter (Opinion, R. 584 at 585, 586, 587). But there is not a word in the specification of Mead or in the claims in suit about the advantage of wireless or cordless type lighters or such known by any other name. The specification was expressly not limited to the form shown and described, (R. 360, lines 27 to 33). The only place where such a limitation could have been found was from the drawing. However this Court has said it is improper to limit a claim by what is shown in the drawing and not in the specification, because the invention would then not have been particularly pointed out and distinctly claimed as the law requires. *Permutit Co. v. Graver Co.* 34 U. S. 52 (58, 60). Therefore the Mead claims should not have been held directed to a wireless type lighter. With-

out a spring or its equivalent imported into the claims 2 and 3, they could not be for a wireless type lighter which was able to give the notice mentioned, and without a latch imported into claims 2, 3 and 11 of Mead, these would not have been directed to a lighter which possessed the stated advantages over the prior manual type of wireless lighters.

5. The Circuit Court of Appeals for the Second Circuit neglected to consider express limitations in the Mead claims, which the Circuit Court of Appeals for the Seventh Circuit regarded as sufficient to find non-infringement.

In an affidavit by Counsel for plaintiff-respondent attached to its Motion to Withhold Notice of Denial of Petition for Certiorari, with Accompanying Affidavit, before this Court in the case of *The Automatic Devices Corp. v. Sinko Tool and Manufacturing Co.*, October Term, 1940, No. 277, the accused device of Sinko Tool and Mfg. Co. was claimed to be "substantially similar" to the accused device of The Cuno Engineering Corp., the defendant-petitioner herein. In each of the accused devices, the resistance or heater element remains stationary in the socket. It is not moved in opening and closing the circuit. A switch member only is moved to open and close the circuit. The Circuit Court of Appeals for the Seventh Circuit said in its Opinion in *The Automatic Devices Corp. v. Sinko Tool and Mfg. Co.*, 112 F. (2d) 335 (340 column 2):

"We think the claims do not read upon the accused device in that defendant's heating member after insertion is not movable on a support to a position where the heating unit is energized."

Claim 2 calls for "means for moving said heating member to a position for establishing an energizing circuit to said heating unit" (R. 360). The Sinko lighter has no such element. The Cuno lighter has no such element.

Claim 3 calls for "said heating member being movable on said support to a position where said heating unit is energized".

Claim 11 requires "said heater member being movable between an energized position where a circuit is established from said terminals to said heater, and an off position where said circuit is interrupted".

The accused device is illustrated in open and closed circuit positions (R. 341, 342) and in each the heater member is stationary. A switch member in both the Sinko and the Cuno devices is movable but is not a heater member, nor is it intended to get hot.

The District Court in the instant case said:

"Against the background of the prior art his arrangement (Mead's) was not entitled to a broad range of equivalents. And the defendant has used a simplified and improved arrangement dispensing with some of the parts which Mead found necessary." (R. 567).

In other words the Cuno lighter is not the patentable equivalent of the Mead disclosure. Cuno uses a stationary socket with a longitudinally sliding switch member under pressure of an ordinary helical spring. Mead shows a spiral bimetal spring for rotating his socket and plug. None of the parts are interchangeable.

6. A number of factual errors were made in the opinion of the Circuit Court of Appeals for the Second Circuit, as set forth in the petition for corrections (R. 589).

The trial court correctly found (R. 551, F. 1652) that plaintiff-respondent did not manufacture or sell; the Circuit Court of Appeals for the Second Circuit was in error in finding that the plaintiff-respondent manufactured lighters, and that wireless lighters were in great demand and competition had developed before 1927 (Opinion, R. 584 at

585). This is mentioned in part under Section 1 of this argument.

The Court of Appeals for the Second Circuit erroneously found that Mead "did bring to final form a contrivance which had become a standard fixture in motor cars" (Opinion, R. 584 at 587). It is upon this erroneous finding that that court sustained the patent. The record shows unmistakably that the Mead rotary plug and rotary socket device was not a success. There is no evidence of a single sale of such a device since 1929 when the patent issued and no evidence of a successful commercial automatic lighter until 1936 (see sections 1 and 2 of this argument).

7. The Circuit Court of Appeals for the Second Circuit erred in not holding and finding the Mead claims in suit to be invalid for their failure to comply with Section 4888 R. S.

Sec. 4888 R. S. (U. S. C. Title 35 (Sec. 33)) reads in part as follows:

"Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; * * * and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. * * *

Plaintiff-respondent urged the trial court to regard the handle or knob as the "means for moving said heating member" of claim 2, but that court refused to do so. The

knob is only the means by which the heating member of Mead may be moved. In claim 1 this means was said to be "on the base member" which holds the socket. All claims in suit are defective because vague and incomplete for any novel and useful purpose without the spring and latch mentioned in Section 3 of this argument. Just what are the electrical supply terminals of claims 2 and 11, is also uncertain in scope. The Mead claims in suit should be invalid because vague and indefinite and because they do not particularly point out and distinctly claim the combination sought to be protected as required by law. *Merrill v. Yeo-*
mans 94 U. S. 56; *General Electric Co. v. Wabash* 304 U. S. 364; *Permutit Co. v. Graver Co.* 284 U. S. 52 (58, 60).

Conclusion.

It is respectfully requested that this Petition be granted to harmonize the conflicting opinions as to the validity and infringement of the Mead patent and to correct the several errors specified herein.

Respectfully,

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